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Report on decisions of Administrative Tribunals

Report of the Secretary-General

I. INTRODUCTION

1. The General Assembly, in part VI of its resolution 48/224 of 23 December 1993, noted that recent judgements of the International Labour Organization (ILO), had both an administrative and a financial impact on the common system. The Assembly regretted that the International Civil Service Commission (ICSC) and other common system organizations, other than the respondent organization to the appeals, did not have the opportunity to present their views to the Administrative Tribunal of ILO, particularly as under the Rules of the United Nations Administrative Tribunal, the Chairman of the United Nations Joint Staff Pension Board (UNJSPB) may intervene in a case if its outcome could affect the administration of the Pension Fund. The Assembly noted that there were no mechanisms to ensure timely notice of such cases to UNJSPB and that no such opportunity for intervention was even afforded to ICSC.

2. As a result, in addition to requesting the Secretary-General and other executive heads to consult fully with UNJSPB and ICSC in cases that are before either Tribunal and which involve those organs or decisions taken by those organs, the Assembly, in paragraph 7 of the resolution, requested the Secretary-General, in consultation with the executive heads, to examine the feasibility of:

> "(a) Amending the statute of the International Civil Service Commission and/or the relationship agreements between the United Nations and the other organizations of the common system with a view to ensuring a coordinated response in all appeals involving the conditions of service of staff of the common system;

"(b) Introducing arrangements similar to those under article 20 of the Rules of Procedure of the United Nations Administrative Tribunal and under article 17, paragraph 1 of the Rules of Court of the Administrative Tribunal of the International Labour Organization, with established mechanisms for providing timely notice of such cases to the International Civil Service Commission, to enable the Commission to intervene in appeals before those Tribunals involving decisions or recommendations of the Commission or any other common system issues; and to report thereon to the General Assembly at its forty-ninth session."

II. CONSULTATIONS WITHIN CCAQ

3. The General Assembly's request was considered by the Consultative Committee for Administrative Questions (Personnel and General Administrative Questions) at its eightieth and eighty-first sessions in February and July 1994, respectively, on the basis of notes submitted by the United Nations Secretariat.

A. Amendment of relationship agreements

4. As regards the possibility of introducing amendments to the relationship agreements between the United Nations and the specialized agencies for the purpose of ensuring a "coordinated response in all appeals involving the conditions of service of staff of the common system", it was recognized that given the nature of the relationship agreements, in which, essentially, the specialized agencies and the United Nations agree in broad and general terms on the manner in which they are to interact with each other, the introduction of detailed provisions in the agreements requiring the organizations to advise ICSC of any significant appeals would be inappropriate. In this connection, it should also be noted that the desirability of amending the relationship agreements between the United Nations and the specialized agencies is a matter under separate review by the Administrative Committee on Coordination (ACC) and the Economic and Social Council; that review is undertaken pursuant to paragraph 11 of General Assembly resolution 46/191 B of 31 July 1992, in which the Assembly called upon the Economic and Social Council "to review and, where appropriate, strengthen the applicable sections of the relationship agreements between the United Nations and member organizations of the common system, ..., in order to enhance comparability and further adherence to the goals and objectives of the common system". In considering the desirability of reviewing and/or revising the relationship agreements, ACC indicated that such review and/or amendments would not be beneficial (see E/1993/119/Add.1).

5. A proposal to amend the Statute of ICSC was also discussed in CCAQ. That proposal sought to ensure that organizations formally notify ICSC of cases that may have an impact upon the regulation and coordination of conditions of service of the common system and that enable it to intervene before the United Nations Administrative Tribunal or the Administrative Tribunal of ILO if it so desires. However, it was deemed that such a proposal would cause too many difficulties by reopening the whole issue of the Statute of ICSC.

B. Amendment to the Rules of the United Nations Administrative Tribunal and the Administrative Tribunal of ILO

6. The United Nations then proposed that much the same result could be achieved by a resolution of the General Assembly requesting the governing bodies of the organizations of the common system to adopt resolutions instructing their executive heads to inform the Executive Secretaries of ICSC and UNJSPF promptly of pending litigation involving matters within the sphere of competence of their respective organs and inviting them either to make comments on the appeals, which comments would be incorporated in the Respondent's Answer to the Tribunals, or to make separate submissions to the Tribunals, if permitted by the Rules of those Tribunals.

7. In this respect, it was explained to CCAQ that the General Assembly, in its resolution 48/224, had noted that article 20 of the Rules of the United Nations Administrative Tribunal enabled the Chairman of UNJSPB to intervene in a case "if it is considered that the judgement to be given by the Tribunal could affect the administration of the United Nations Joint Staff Pension Fund". The United Nations suggested to CCAQ that the following amendment to article 20 could extend its applicability to ICSC, thereby enabling the Commission to intervene in a case to which its attention had been drawn by a member organization:

> "The Secretary-General of the United Nations, the chief administrative officer of a specialized agency to which the competence of the Tribunal has been extended in accordance with its Statute, the Chairman of the Joint Staff Pension Board, or the Chairman of the International Civil Service Commission, may, on giving previous notice to the President of the Tribunal, intervene at any stage, if they consider that their respective administrations may be affected by the judgement to be given by the Tribunal."

8. The United Nations suggested to CCAQ that, if such an amendment were to be found acceptable to ACC, and subsequently approved by the General Assembly, the Secretary-General would write to the President of the United Nations Administrative Tribunal requesting the Tribunal to consider amending article 20 of its Rules along the lines indicated above.

9. In so far as the Administrative Tribunal of ILO is concerned, it was noted that article 13 of its Rules had been amended effective 1 May 1994 to provide as follows:

> "1. Anyone to whom the Tribunal is open under article II of the Statute may intervene in a complaint on the grounds that the ruling which the Tribunal is to make may affect him.
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> "2. An organization over which the Tribunal has jurisdiction may intervene in a complaint on the grounds that the ruling which the Tribunal is to make may affect it.
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> "3. The Tribunal or, between sessions, the President, may instruct the Registrar to give notice of a complaint to any third party if it appears that such third party may want to intervene.

"4. To be receivable, an application to intervene shall be delivered at the Registry before the opening of the session for which the complaint is listed."

10. The United Nations suggested to CCAQ that article 13 (2), quoted above, could be amended along the same lines as suggested above for article 20 (1) of the Rules of the United Nations Administrative Tribunal. This would enable UNJSPB and ICSC to intervene in a case dealing with their respective spheres of competence. Such a result could be achieved by recommending to the Assembly that it request the Secretary-General to write to the Administrative Tribunal of ILO asking that it consider adopting amendments along the lines suggested above so that the bodies responsible for the regulation and coordination of conditions of service have the right to intervene and to make a submission to that Tribunal.

III. CONSIDERATION BY MEMBERS OF CCAQ

11. The members of CCAQ recognized that, for the proper administration of justice, it was important for the Tribunals to have before them all relevant information when reaching a decision. The majority of the organizations had no objection to requesting the Tribunals to revise their procedures in order to allow ICSC or UNJSPB to make a submission as amicus curiae ("friend of the court") provided that such submissions were limited to the provision of factual technical information. Other organizations, however, did not consider such an approach to be appropriate as it was not reasonable to expect ICSC to avoid taking an advocate's position in a case which challenged its decisions. Yet a third group of organizations considered that ACC should be invited to urge organizations to ensure that ICSC was consulted on appeals relating to common system matters in order to obtain all relevant information, and that such information be used in the responding organization's answer. It was, however, agreed that in no case should the appeal process be delayed. The United Nations was asked to take note of these findings and reflect them in the Secretary-General's report to the General Assembly.

IV. RECOMMENDATIONS

12. After having considered the views expressed in CCAQ, the Secretary-General suggests to the Assembly that it would not be appropriate, for the reasons set out in paragraph 4 above, to seek to amend the relationship agreements between the United Nations and the other organizations of the common system; nor would it be appropriate to seek to amend the Statute of ICSC (see para. 5 above). However, the Secretary-General considers that, with a view to ensuring a coordinated response in all appeals involving the conditions of service of staff of the common system, it would be possible to proceed with an amended version of his original proposals to CCAQ as the amendments take account of the majority viewpoint in CCAQ.

13. The Secretary-General thus first suggests that the Assembly request him to write to the President of the United Nations Administrative Tribunal asking the

Tribunal to consider amending article 20 of its Rules along the following lines (new text underlined):

"ARTICLE 20

"1. The Secretary-General of the United Nations, the chief administrative officer of a specialized agency to which the competence of the Tribunal has been extended in accordance with its Statute, or the Chairman of the Joint Staff Pension Board, may, on giving previous notice to the President of the Tribunal, intervene at any stage, if they consider that their respective administrations may be affected by the judgement to be given by the Tribunal.

"2. The Tribunal may permit, prior to the close of written proceedings, the Chairman of the International Civil Service Commission to provide factual or technical information to the Tribunal in cases involving appeals against decisions taken on the basis of International Civil Service Commission actions."

This amendment would take account of the majority view in CCAQ that ICSC should not be an advocate in such proceedings but should only provide factual and technical information, if ICSC sought to present such information and if the Tribunal wished to consider such information.

14. Secondly, the Secretary-General suggests that the Assembly request him to write to the President of the Administrative Tribunal of ILO asking the Tribunal to consider amending article 13 of its Rules by inserting a new provision along the following lines:

"ARTICLE 13 bis

"The Tribunal may permit, prior to the close of written proceedings, the Chairman of the United Nations Joint Staff Pension Board and the Chairman of the International Civil Service Commission to provide factual or technical information to the Tribunal in cases involving appeals against decisions taken on the basis of International Civil Service Commission or United Nations Joint Staff Pension Board actions."

This would enable UNJSPB and ICSC to seek to provide information in a case that affected the operation of UNJSPB or ICSC, as the case may be. Although the powers of UNJSPB to make submissions in a case of the Administrative Tribunal of ILO would be less than in a case of the United Nations Administrative Tribunal where it may intervene, the difference is justified by the fact that the United Nations Administrative Tribunal has direct jurisdiction over pension cases pursuant to the Regulations of the United Nations Joint Staff Pension Fund.